

104TH CONGRESS
2D SESSION

H. R. 3586

To amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 1996

Mr. MICA introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To amend title 5, United States Code, to strengthen veterans' preference, to increase employment opportunities for veterans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Veterans Employment
5 Opportunities Act of 1996”.

6 **SEC. 2. EQUAL ACCESS FOR VETERANS.**

7 (a) COMPETITIVE SERVICE.—Section 3304 of title 5,
8 United States Code, is amended by adding at the end the
9 following:

1 “(f) A preference eligible or an individual who has
2 been separated from the armed forces under honorable
3 conditions after 4 or more years of active service shall not
4 be denied the opportunity to compete for a vacant position
5 within an agency, in the competitive service or the ex-
6 cepted service, by reason of—

7 “(1) not having acquired competitive status; or

8 “(2) not being an employee of such agency.”.

9 (b) CIVIL SERVICE EMPLOYMENT INFORMATION.—

10 (1) VACANT POSITIONS.—Section 3327(b) of
11 title 5, United States Code, is amended by striking
12 “and” at the end of paragraph (1), by redesignating
13 paragraph (2) as paragraph (3), and by inserting
14 after paragraph (1) the following:

15 “(2) each vacant position in the agency for
16 which competition is restricted to individuals having
17 competitive status or employees of such agency, ex-
18 cluding any position under paragraph (1), and”.

19 (2) ADDITIONAL INFORMATION.—Section 3327
20 of title 5, United States Code, is amended by adding
21 at the end the following:

22 “(c) Any notification provided under this section
23 shall, for all positions under subsection (b)(1) as to which
24 section 3304(f) applies and for all positions under sub-

1 section (b)(2), include a notation as to the applicability
2 of section 3304(f) with respect thereto.”.

3 (c) GOVERNMENTWIDE LISTS.—

4 (1) VACANT POSITIONS.—Section 3330(b) of
5 title 5, United States Code, is amended to read as
6 follows:

7 “(b) The Office of Personnel Management shall cause
8 to be established and kept current—

9 “(1) a comprehensive list of all announcements
10 of vacant positions in the competitive service within
11 each agency that are to be filled by appointment for
12 more than 1 year and for which applications are
13 being or will soon be accepted from outside the
14 agency’s work force; and

15 “(2) a comprehensive list of all announcements
16 of vacant positions within each agency for which ap-
17 plications are being or will soon be accepted and for
18 which competition is restricted to individuals having
19 competitive status or employees of such agency, ex-
20 cluding any position under paragraph (1).”.

21 (2) ADDITIONAL INFORMATION.—Section
22 3330(c) of title 5, United States Code, is amended
23 by striking “and” at the end of paragraph (2), by
24 redesignating paragraph (3) as paragraph (4), and
25 by inserting after paragraph (2) the following:

1 “(3) for all positions under subsection (b)(1) as
 2 to which section 3304(f) applies and for all positions
 3 under subsection (b)(2), a notation as to the applica-
 4 bility of section 3304(f) with respect thereto; and”

5 (3) CONFORMING AMENDMENT.—Section
 6 3330(d) of title 5, United States Code, is amended
 7 by striking “The list” and inserting “Each list
 8 under subsection (b)”.

9 **SEC. 3. SPECIAL PROTECTIONS FOR PREFERENCE ELIGI-**
 10 **BLES IN REDUCTIONS IN FORCE.**

11 Section 3502 of title 5, United States Code, as
 12 amended by section 1034 of the National Defense Author-
 13 ization Act for Fiscal Year 1996 (Public Law 104–106;
 14 110 Stat. 430), is amended by adding at the end the fol-
 15 lowing:

16 “(g)(1) A position occupied by a preference eligible
 17 shall not be placed in a single-position competitive level
 18 if the preference eligible is qualified to perform the essen-
 19 tial functions of any other position at the same grade (or
 20 occupational level) in the competitive area. In such cases,
 21 the minimum competitive level shall consist of all such po-
 22 sitions for which the preference eligible is qualified.

23 “(2) A preference eligible shall be considered quali-
 24 fied to perform the essential functions of a position if, by
 25 reason of experience, training, or education, a reasonable

1 person could conclude that the preference eligible would
2 be able to perform those functions successfully within a
3 period of 270 days. A preference eligible shall not be con-
4 sidered unqualified solely because he fails to meet mini-
5 mum qualifications relating to the grade (or occupational
6 level) of required previous experience established for such
7 position by the Office of Personnel Management or the
8 agency.

9 “(h) A preference eligible whose current or most re-
10 cent performance rating is at least fully successful (or the
11 equivalent) shall have, in addition to such assignment
12 rights as are prescribed by regulation, the right, in lieu
13 of separation, to be assigned to any position for which he
14 is qualified under subsection (g)(2)—

15 “(1) that is within the preference eligible’s com-
16 muting area and that is then occupied by an individ-
17 ual, other than another preference eligible, who was
18 placed in such position (whether by appointment or
19 otherwise) within 6 months before the reduction in
20 force; or

21 “(2) that is within the preference eligible’s com-
22 petitive area and that is not more than 3 grades (or
23 appropriate grade intervals or equivalent) below the
24 position from which the preference eligible was re-
25 leased, except that, in the case of a preference eligi-

1 ble with a compensable service-connected disability
2 of 30 percent or more, this paragraph shall be ap-
3 plied by substituting ‘5 grades’ for ‘3 grades’.

4 In the event that a preference eligible is entitled to assign-
5 ment to more than 1 position under this subsection, the
6 agency shall assign the preference eligible to the position
7 requiring the least (or no) reduction in basic pay.

8 “(i) A preference eligible may challenge the classifica-
9 tion of any position to which the preference eligible asserts
10 assignment rights in an action before the Merit Systems
11 Protection Board.

12 “(j)(1) As soon as practicable after the date of the
13 enactment of this subsection, each agency shall establish
14 an agencywide priority placement program to facilitate
15 employment placement for preference eligibles who—

16 “(A) are scheduled to be separated from service
17 due to a reduction in force; or

18 “(B) are separated from service due to a reduc-
19 tion in force.

20 “(2) Each agencywide priority placement program
21 shall include provisions under which a vacant position
22 shall not be filled by the appointment or transfer of any
23 individual from outside of that agency or by the appoint-
24 ment or transfer of any individual other than a preference
25 eligible from within that agency if—

1 “(A) there is then available any individual de-
2 scribed in paragraph (3) who is qualified for the po-
3 sition; and

4 “(B) the position—

5 “(i) is at the same grade (or pay level) or
6 not more than 1 grade (or pay level) below that
7 of the position last held by such individual be-
8 fore placement in the new position; and

9 “(ii) is within the same commuting area as
10 the individual’s residence or last-held position.

11 “(3) For purposes of an agencywide priority place-
12 ment program, an individual shall be considered to be de-
13 scribed in this paragraph if such individual’s most recent
14 performance rating was at least fully successful (or the
15 equivalent), and such individual is either—

16 “(A) a preference eligible of such agency who is
17 scheduled to be separated, as described in paragraph
18 (1)(A); or

19 “(B) a preference eligible who became a former
20 employee of such agency as a result of a separation,
21 as described in paragraph (1)(B).

22 “(4) A preference eligible shall cease to be eligible
23 to participate in a program under this subsection upon
24 the earlier of—

1 “(A) the conclusion of the 12-month period be-
2 ginning on the date on which the preference eligible
3 first became eligible to participate under paragraph
4 (3); or

5 “(B) the date on which the individual declines
6 a bona fide offer (or, if the individual does not act
7 on the offer, the last day for accepting such offer)
8 from the affected agency of a position described in
9 paragraph (2)(B).”.

10 **SEC. 4. IMPROVED REDRESS FOR VETERANS.**

11 (a) ADMINISTRATIVE REDRESS.—Subchapter I of
12 chapter 33 of title 5, United States Code, is amended by
13 adding at the end the following:

14 **“§ 3331. Administrative redress**

15 “(a) Any preference eligible or other individual de-
16 scribed in section 3304(f) who alleges that an agency has
17 violated such individual’s rights under any statute or regu-
18 lation relating to veterans’ preference, or any right pro-
19 vided by section 3304(f), may file a complaint with the
20 Secretary of Labor, and the Secretary shall process such
21 complaint in accordance with sections 4322 and 4326 of
22 title 38.

23 “(b) Any preference eligible or other individual de-
24 scribed in section 3304(f) may pursue an allegation de-

1 scribed in subsection (a) in accordance with section 4324
2 of title 38.

3 **“§ 3332. Judicial redress**

4 “In lieu of the administrative redress provided under
5 section 3331, a preference eligible or other individual de-
6 scribed in section 3304(f) may file an action with the ap-
7 propriate United States district court not later than 1 year
8 after the occurrence of the alleged violation.

9 **“§ 3333. Remedy**

10 “(a) If the Merit Systems Protection Board (in a pro-
11 ceeding under section 3331) or a court (in a proceeding
12 under section 3332) determines that an agency has vio-
13 lated a right described in section 3331, the Board or court
14 shall order the agency to comply with such provisions and
15 award compensation for any loss of wages or benefits suf-
16 fered by the individual by reason of the violation involved.
17 If the Board or court determines that such violation was
18 willful, it shall award an amount equal to backpay as liq-
19 uidated damages.

20 “(b) A preference eligible or individual described in
21 section 3304(f) who prevails in an action under section
22 3331 or 3332 shall be awarded reasonable attorney fees,
23 expert witness fees, and other litigation expenses.”.

24 (b) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 33 of title 5, United States

1 Code, is amended by adding after the item relating to sec-
 2 tion 3330 the following:

“3331. Administrative redress.

“3332. Judicial redress.

“3333. Remedy.”.

3 **SEC. 5. EXTENSION OF VETERANS’ PREFERENCE.**

4 (a) AMENDMENT TO TITLE 5, UNITED STATES
 5 CODE.—Paragraph (3) of section 2108 of title 5, United
 6 States Code, is amended by striking “the Federal Bureau
 7 of Investigation and Drug Enforcement Administration
 8 Senior Executive Service, or the General Accounting Of-
 9 fice;” and inserting “or the Federal Bureau of Investiga-
 10 tion and Drug Enforcement Administration Senior Execu-
 11 tive Service;”.

12 (b) AMENDMENT TO TITLE 3, UNITED STATES
 13 CODE.—Chapter 2 of title 3, United States Code, is
 14 amended by adding at the end the following:

15 **“§ 115. Veterans’ preference**

16 “(a) Except as provided in subsection (b), appoint-
 17 ments under sections 105, 106, and 107 shall be made
 18 in accordance with section 2108, and sections 3309
 19 through 3312, of title 5.

20 “(b) Subsection (a) shall not apply to any appoint-
 21 ment to a position the rate of basic pay for which is at
 22 least equal to the minimum rate established for positions
 23 in the Senior Executive Service under section 5382 of title
 24 5 and the duties of which are comparable to those de-

1 scribed in section 3132(a)(2) of such title or to any other
 2 position if, with respect to such position, the President
 3 makes certification—

4 “(1) that such position is—

5 “(A) a confidential or policy-making posi-
 6 tion; or

7 “(B) a position for which political affili-
 8 ation or political philosophy is otherwise an im-
 9 portant qualification; and

10 “(2) that any individual selected for such posi-
 11 tion is expected to vacate the position at or before
 12 the end of the President’s term (or terms) of office.
 13 Each individual appointed to a position described in the
 14 preceding sentence shall be notified in writing of the ex-
 15 pectation described in paragraph (2) at the time of ap-
 16 pointment.”

17 (c) LEGISLATIVE BRANCH APPOINTMENTS.—

18 (1) IN GENERAL.—Except as provided in para-
 19 graph (2), appointments to positions in the legisla-
 20 tive branch of the Government shall be made in ac-
 21 cordance with section 2108, and sections 3309
 22 through 3312, of title 5, United States Code.

23 (2) EXCLUSIONS.—Paragraph (1) shall not
 24 apply to—

1 (A) an appointment made by the President
2 with the advice and consent of the Senate;

3 (B) an appointment made by a Member of
4 Congress or by a committee or subcommittee of
5 either House of Congress; or

6 (C) an appointment to a position the rate
7 of basic pay for which is at least equal to the
8 minimum rate established for positions in the
9 Senior Executive Service under section 5382 of
10 title 5, United States Code, and the duties of
11 which are comparable to those described in sec-
12 tion 3132(a)(2) of such title.

○